

Introduced by Senator Kuehl

February 19, 2004

~~An act to add Section 114716 to the Health and Safety Code, relating to radiation.~~ *An act to add Section 2282.5 to the Business and Professions Code, relating to medicine.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1456, as amended, Kuehl. ~~Radiation: contamination~~ *Hospitals: physicians and surgeons: self-governance.*

(1) *The Medical Practice Act provides for licensing and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that the practice of medicine in a licensed general or specialized hospital having 5 or more physicians and surgeons on the medical staff without provision for organization and self-governance of the medical staff under certain rules constitutes unprofessional conduct subject to discipline by the board. A violation of specified provisions of the Medical Practice Act is a crime.*

This bill would specify certain rights that would be included in a hospital medical staff self-governance provisions. The bill would require the medical staff and the hospital governing board to meet and confer to resolve disputes related to these provisions, and would authorize court relief in certain circumstances. The bill would make findings and declarations of the Legislature in this regard.

(2) *Because the bill would change the definition of a crime, it would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) This bill would become operative only if SB 1325 is enacted and becomes effective on or before January 1, 2005.

~~The existing Radiation Control Law requires the State Department of Health Services, among other things, to issue licenses, and prohibits the state department from issuing a license to receive radioactive material for disposal on land unless specified requirements are satisfied. Existing law prohibits any person from burying, throwing away, or disposing of radioactive waste except in a manner that will result in no significant radioactive contamination of the environment.~~

~~This bill would prohibit an owner or operator of the Santa Susana Field Laboratory in Ventura County from using, selling, transferring, or leasing any part of that site for residential use unless the federal Environmental Protection Agency finds that the radioactive contamination at the Santa Susana Field Laboratory has been surveyed and remediated in accordance with the federal Comprehensive Environment Response, Compensation, and Liability Act of 1980.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 114716 is added to the Health and~~
2 *SECTION 1. (a) The Legislature finds and declares that*
3 *providing quality medical care in hospitals depends on the mutual*
4 *accountability, interdependence, and responsibility of the medical*
5 *staff and the hospital governing board for the proper performance*
6 *of their respective obligations.*
7 *(b) The Legislature further finds and declares that the*
8 *governing board of a hospital must act to protect the quality of*
9 *medical care provided and the competency of its medical staff, and*
10 *to ensure the responsible governance of the hospital in the event*
11 *that the medical staff fails in any of its substantive duties or*
12 *responsibilities. Nothing in this act shall be construed to*
13 *undermine this authority. The final authority of the hospital*
14 *governing board may be exercised for the responsible governance*
15 *of the hospital or for the conduct of the business affairs of the*

hospital; however, that final authority may only be exercised with a reasonable and good faith belief that the medical staff has failed to fulfill a substantive duty or responsibility in matters pertaining to the quality of patient care. It would be a violation of the medical staff's self-governance and independent rights for the hospital governing board to assume a duty or responsibility of the medical staff precipitously, unreasonably, or in bad faith.

(c) Finally, the Legislature finds and declares that the specific actions that would constitute bad faith or unreasonable action on the part of either the medical staff or hospital governing board will always be fact-specific and cannot be precisely described in statute. The provisions set forth in this act do nothing more than provide for the basic independent rights and responsibilities of a self-governing medical staff. Ultimately, a successful relationship between a hospital's medical staff and governing board depends on the mutual respect of each for the rights and responsibilities of the other.

SEC. 2. Section 2282.5 is added to the Business and Professions Code, to read:

2282.5. (a) The medical staff's right of self-governance shall include, but not be limited to, all of the following:

(1) Establishing, in medical staff bylaws, rules, or regulations, criteria and standards, consistent with Article 11 (commencing with Section 800) of Chapter 1 of Division 2, for medical staff membership and privileges, and enforcing those criteria and standards.

(2) Establishing, in medical staff bylaws, rules, or regulations, clinical criteria and standards to oversee and manage quality assurance, utilization review, and other medical staff activities including, but not limited to, periodic meetings of the medical staff and its committees and departments and review and analysis of patient medical records.

(3) Selecting and removing medical staff officers.

(4) Assessing medical staff dues and utilizing the medical staff dues as appropriate for the purposes of the medical staff.

(5) The ability to retain and be represented by independent legal counsel at the expense of the medical staff, provided that medical staff at the University of California have the right to retain and be represented by independent legal counsel at the expense of the medical staff upon approval by the Regents of the University

1 of California or their designee in accordance with the bylaws of the
2 Regents, which approval shall not be unreasonably denied.

3 (6) Initiating, developing, and adopting medical staff bylaws,
4 rules, and regulations, and amendments thereto, subject to the
5 approval of the hospital governing board, which approval shall not
6 be unreasonably withheld.

7 (b) The medical staff bylaws shall not interfere with the
8 independent rights of the medical staff to do any of the following,
9 but shall set forth the procedures for:

10 (1) Selecting and removing medical staff officers.

11 (2) Assessing medical staff dues and utilizing the medical staff
12 dues as appropriate for the purposes of the medical staff.

13 (3) The ability to retain and be represented by independent
14 legal counsel at the expense of the medical staff.

15 (c) With respect to any dispute arising under this section, the
16 medical staff and the hospital governing board shall meet and
17 confer in good faith to resolve the dispute. Whenever any person
18 or entity has engaged in or is about to engage in any acts or
19 practices that hinder, restrict, or otherwise obstruct the ability of
20 the medical staff to exercise its rights, obligations, or
21 responsibilities under this section, the superior court of any
22 county, on application of the medical staff, and after determining
23 that reasonable efforts, including reasonable administrative
24 remedies provided in the medical staff bylaws, rules, or
25 regulations, have failed to resolve the dispute, may issue an
26 injunction, writ of mandate, or other appropriate order.
27 Proceedings under this section shall be governed by Chapter 3
28 (commencing with Section 525) of Title 7 of Part 2 of the Code of
29 Civil Procedure.

30 SEC. 3. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

1 *SEC. 4. This act shall become operative only if SB 1325 of the*
2 *2003–04 Regular Session is enacted and becomes effective on or*
3 *before January 1, 2005.*

4 Safety Code, to read:

5 114716. — An owner or operator of the site known as the Santa
6 Susana Field Laboratory, consisting of all parcels of land that
7 comprise the Santa Susana Field Laboratory in Ventura County, or
8 any part thereof, may not use, sell, transfer, or lease any part of the
9 site for residential use unless the federal Environmental Protection
10 Agency finds, in writing, that the radioactive contamination at the
11 Santa Susana Field Laboratory has been surveyed and remediated
12 in accordance with the standards, guidance, procedures, and
13 practices established by the Environmental Protection Agency for
14 the remediation of sites with radioactive contaminants intended
15 for residential use pursuant to the Comprehensive Environment
16 Response, Compensation, and Liability Act of 1980, 42 U.S.C.
17 Sec. 9601 et seq.

18 SEC. 2. — The Legislature finds and declares that a special law
19 is necessary and that a general law cannot be made applicable
20 within the meaning of Section 16 of Article IV of the California
21 Constitution because of the unique legal status and circumstances
22 regarding radioactivity at the Santa Susana Field Laboratory in
23 Ventura County.